

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re TIFFANY V., a Person Coming
Under the Juvenile Court Law.

SAN BERNARDINO COUNTY
DEPARTMENT OF CHILDREN'S
SERVICES,

Plaintiff and Respondent,

v.

TERRENCE B.,

Defendant and Appellant.

E033932

(Super.Ct.No. J187745)

OPINION

APPEAL from the Superior Court of San Bernardino County. A. Rex Victor,
Judge. Affirmed.

Michael D. Randall, under appointment by the Court of Appeal, for Defendant and
Appellant.

Ronald D. Reitz, County Counsel, and Phebe W. Chu, Deputy County Counsel,
for Plaintiff and Respondent.

Konrad S. Lee, under appointment by the Court of Appeal, for Minor.

Appellant, Terrence B. (hereinafter Terrence), challenges the juvenile court's denial of his petition for de facto parent status as to Tiffany V., Sabrina V., and Lisa C., his ex-girlfriend's daughters. Terrence claims the juvenile court abused its discretion in denying his motion. We reject this contention and affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

The mother of the girls, Erika C. (hereafter Mother), had a lengthy history of neglect referrals with the San Bernardino County Department of Children's Services (DCS), and was working on a Voluntary Family Maintenance (VFM) case with DCS. On April 9, 2003, social workers visited Mother's residence, and found the home in gross disarray and Mother's two younger daughters, Lisa, age 8, and Sabrina, age 10, alone and unsupervised. Terrence reported that Mother routinely left her two youngest girls home alone for periods of time without stating when she would return, where she was going, or how to contact her if help was needed. Tiffany, Mother's oldest daughter, age 13, reported that she had moved in with Terrence, Mother's ex-boyfriend, because she could not tolerate the home's filthy condition. Tiffany also noted that Mother behaved oddly and would stay up all night writing her life story on three-by-five cards and talk to herself, and that she observed glass drug pipes around the house. The maternal grandmother reported that Mother had been diagnosed as a schizophrenic in her teens. Mother noted that she had not taken medication in years and that she did not need it.

Following the visit of Mother's home, the social workers moved the girls and placed all three in confidential foster care. On April 11, 2003, DCS filed Welfare and Institutions Code¹ section 300 petitions on behalf of the children, alleging that Mother failed to adequately provide for the children's needs; that Mother suffered from a mental disorder; and that the children's fathers failed to supervise and protect them. It was subsequently determined that there was no contact between the children and their fathers, and the fathers' whereabouts were unknown.

At the April 14, 2003, detention hearing, the juvenile court ordered the children removed from parental custody and detained them in confidential foster care. Eventually, the juvenile court found the allegations in the petitions to be true; declared the children dependents of the court; and ordered Mother to participate in reunification services.

Although Terrence and Mother had ended their relationship, the social worker reported that Terrence remained close to Tiffany and was a "source of resource and strength to the entire family and the mother." The social worker, however, noted "[t]he motivation surrounding the support and involvement of [Terrence] are unclear and diffuse at this time." Terrence accompanied Mother to the supervised visits. Mother was marginally appropriate in the visits. The children asked several times during the visit if it was over yet, and Tiffany spent most of her time ignoring her mother and talking softly with Terrence.

¹ All future references are to the Welfare and Institutions Code unless otherwise stated.

On April 30, 2003, Terrence filed a form petition for de facto parent status as to Tiffany.² In the petition, Terrence stated that he wanted (1) to be considered as a custodial alternative for Tiffany; (2) to provide the court with information that would be otherwise unavailable; and (3) to stay informed of Tiffany's situation. The petition also stated that Terrence began dating Mother in August of 1996, and that Mother and her daughters lived with him from October 1996 to December 2001. The petition further noted that from December 2001 to January 2003, Tiffany saw Terrence intermittently, approximately two to three days out of every two or three weeks; and that from January 2003 to April 2003, Tiffany lived with him. Terrence also reported that he was Tiffany's sole means of transportation; that he took her to the doctor's office and spoke with the doctor afterwards; and that he attended her parent-teacher conferences. Terrence claimed to be like a father to Tiffany and that she had his love and support. Terrence also stated that Tiffany "always" had her own bedroom; that he "always" gave her "the privacy and personal space" she needed to be "healthy and happy"; that Tiffany had grown to trust him; and that she told him that he was "the only father she has really known." Terrence further stated that he had helped Tiffany with her school projects for which "she received excellent grades"; and that Tiffany spoke with him "on a regular basis [about] her day at school."

² Although the de facto parent status petition mentioned only Tiffany's name, at the hearing on May 20, 2003, Terrence informed the court that the petition was for all three children.

In response to Terrence's petition for de facto parent status, the social worker filed an addendum report expressing concerns DCS had in relation to Terrence's petition. The social worker reported that Terrence had a felony conviction in 1986 for forgery and served three years on probation; that during the past year, law enforcement had been required on two occasions to ask Terrence to leave the family residence; and that more recently, Terrence's behavior, during visits with the children, was deemed so inappropriate that DCS denied him further visits. Terrence was observed to concentrate his entire attention on Tiffany, sitting inordinately close to her and whispering to her during the visits. During the first visit, Terrence discussed Tiffany's eyebrows and in the following visit presented her with a pair of "fancy" tweezers to pluck her eyebrows. During his second visit, he discussed the court process with Tiffany and requested that she speak with her attorney concerning de facto parent status and "the direction of court decisions." It was also noted that Terrence took a disproportionate interest in Tiffany, to the exclusion of the two younger sisters. The social worker opined that Terrence's interest and involvement with Tiffany bordered on an intrusive and obsessive focus, and that his motives appeared to be "self-serving" and "less than honorable."

At the May 20, 2003, pretrial settlement conference hearing, Terrence's petition was heard. The parties submitted the issue on the petition, the social worker's addendum report and argument. On behalf of DCS, the San Bernardino Deputy County Counsel (County Counsel) opposed Terrence's petition on the basis that Terrence failed to meet the definition of a de facto parent. Specifically, Terrence had not assumed the role of a

parent on a day-to-day basis to the girls by meeting the children's needs, nor had he been the children's current caretaker for a substantial period of time. County Counsel also pointed out that Terrence's prior felony conviction excluded him as a possible placement, and his inappropriate behavior caused the social worker such concern that he was suspended from any future visitation with the children.

Terrence denied that he had been inappropriate during the visitations with the children and argued that the forgery conviction was a long time ago and that since that time, he had gone to college without any further incidents. Terrence also pointed out that he had been licensed for a board and care facility for the elderly. He further stated that while he originally submitted the de facto parent status petition just for Tiffany, he subsequently filed additional petitions for Lisa and Sabrina because the court clerk told him it was not good just to petition for Tiffany; consequently, he sought de facto parent status as to all three children.

After considering the matter, the juvenile court denied the petition for de facto parent status. The court found that Terrence failed to meet the requisite definition for a de facto parent, and that it was not in the children's best interest to grant the petition.

On June 20, 2003, Terrence filed a notice of appeal from the denial of his petition for de facto parent status.³

³ Although the notice of appeal only mentions Tiffany's name, Terrence's opening brief repeatedly indicates that the appeal concerns all three children.

II

DISCUSSION

Terrence claims the juvenile court abused its discretion in denying his de facto parent status petition as to Tiffany, Sabrina, and Lisa. We disagree.

We review the juvenile court's decision to grant or deny a de facto parent petition for abuse of discretion. (*In re Michael R.* (1998) 67 Cal.App.4th 150, 156; *In re Jasmon O.* (1994) 8 Cal.4th 398, 415; *In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) In most cases, the lower court does not abuse its discretion if substantial evidence supports its determination. (*In re Michael R.*, *supra*, at p. 156.)

California Rules of Court, rule 1401(a)(8) defines a de facto parent as follows: “‘De facto parent’ means a person who has been found by the court to have assumed, on a day-to-day basis, the role of parent, fulfilling both the child’s physical and psychological needs for care and affection, and who has assumed that role for a substantial period[.]” Factors to be considered in determining de facto parent status include “whether the child is psychologically bonded to the adult; whether the adult has assumed the role of a parent on a day-to-day basis for a substantial period of time and possesses information about the child unique from the other participants in the process; whether the adult has regularly attended juvenile court hearings; and whether a future proceeding may result in an order permanently foreclosing any future contact with the adult. Above all, the decision depends on the particular individual seeking such status and the unique circumstances of the case.” (*In re Ashley P.* (1998) 62 Cal.App.4th 23,

27.) “If some or all of these factors apply, it is immaterial whether the adult was the ‘child’s current or immediately succeeding custodian.’ [Citations.] Because a court can only benefit from having all relevant information, a court should liberally grant de facto parent status. If the information presented by the de facto parent is not helpful, the court need not give it much weight in the decisionmaking process. [Citation.]” (*In re Patricia L.* (1992) 9 Cal.App.4th 61, 67.) “A person seeking de facto parent status must . . . establish by a preponderance of the evidence that he or she falls within the definition of a de facto parent.” (*Ibid.*)

Here, there is absolutely no evidence that Terrence met the above requirements as to Sabrina and Lisa. Regarding Tiffany, although the record indicates that Terrence had a closer relationship with Tiffany and that she lived with him on a day-to-day basis from January 2003 to April 2003, Terrence, however, failed to meet the requirements for de facto parent status as to Tiffany also. There was no evidence that Tiffany was psychologically bonded to him. The only evidence of Tiffany’s feelings was limited to Terrence’s statements that Tiffany shared the events of her day at school with him and that she said he was “the only father she has really known.” There was also no evidence that showed Terrence’s relationship with Tiffany rose to the level of a de facto parent with respect to assuming the role of a parent on a day-to-day basis for a *substantial* period of time. Although Terrence drove Tiffany to the doctor’s office and attended her parent-teacher conferences for about three months, he failed to present any evidence of fulfilling Tiffany’s physical and psychological needs for care and affection for a

substantial period of time. Terrence also failed to show that he possessed unique information about any of the children, including Tiffany.

Furthermore, as noted above, because the decision to grant de facto parent status ultimately turns on the particular person seeking such status and the unique circumstances of the case, a trial court must take petitioner Terrence's conduct into consideration in ruling on a petition for de facto parent status. (*In re Ashley P.*, *supra*, 62 Cal.App.4th 23, 27; *In re Patricia L.*, *supra*, 9 Cal.App.4th 61, 66-67.) Here, the lower court was presented with troubling information concerning Terrence. Terrence allowed Tiffany to move in with him in January 2003 because of her mother's filthy home condition; yet, he did nothing for Lisa and Sabrina who remained in the home alone on occasions until discovered by DCS in April 2003. At a minimum, Terrence could have notified the authorities concerning Mother's failure to care for Lisa and Sabrina, knowing that Mother routinely left them home alone for long periods of time without stating when she would return, where she was going, or how to contact her if help was needed. Terrence's lack of concern for Tiffany's siblings is consistent with DCS's concerns and observations that he took disproportionate interest in Tiffany, to the exclusion of her younger sisters, and that his motives appeared to be "self-serving" and "less than honorable." Other troubling information concerning Terrence included a report that law enforcement had been required on two separate occasions to ask Terrence to leave the family residence; and that after the children were removed, Terrence's inappropriate behavior continued, to such a degree, that DCS denied him further visits.

Based on the above, we find no evidence that the trial court, which heard evidence and correctly considered the children's interest (*In re Stephanie M.*, *supra*, 7 Cal.4th 295 at p. 317), abused its discretion when it denied the request for de facto parent status.

III

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST

J.

We concur:

RAMIREZ

P. J.

GAUT

J.